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HOUSE BILL 123

48TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2007

INTRODUCED BY

Jim R. Trujillo

AN ACT

RELATING TO CRIME; AMENDING THE DELINQUENCY ACT TO MAKE
CONSUMPTION OF ALCOHOLIC LIQUOR A DELINQUENT ACT.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 32A-2-3 NMSA 1978 (being Laws 1993,
Chapter 77, Section 32, as amended) is amended to read:

"32A-2-3. DEFINITIONS.--As used in the Delinquency Act:

A. "delinquent act" means an act committed by a
child that would be designated as a crime under the law if
committed by an adult, including the following offenses:

(1) an offense pursuant to municipal traffic
codes or the Motor Vehicle Code:

(a) driving while under the influence of
intoxicating liquor or drugs;

(b) failure to stop in the event of an

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1 accident causing death, personal injury or damage to property;

2 (c) unlawful taking of a vehicle or
3 motor vehicle;

4 (d) receiving or transferring of a
5 stolen vehicle or motor vehicle;

6 (e) homicide by vehicle;

7 (f) injuring or tampering with a
8 vehicle;

9 (g) altering or changing of an engine
10 number or other vehicle identification numbers;

11 (h) altering or forging of a driver's
12 license or permit or any making of a fictitious license or
13 permit;

14 (i) reckless driving;

15 (j) driving with a suspended or revoked
16 license; or

17 (k) an offense punishable as a felony;

18 (2) buying, attempting to buy, receiving,
19 possessing, consuming or being served any alcoholic liquor or
20 being present in a licensed liquor establishment, other than a
21 restaurant or a licensed retail liquor establishment, except in
22 the presence of the child's parent, guardian, custodian or
23 adult spouse. As used in this paragraph, "restaurant" means an
24 establishment where meals are prepared and served primarily for
25 on-premises consumption and that has a dining room, a kitchen

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1 and the employees necessary for preparing, cooking and serving
2 meals. "Restaurant" does not include an establishment, as
3 defined in regulations promulgated by the director of the
4 special investigations division of the department of public
5 safety, that serves only hamburgers, sandwiches, salads and
6 other fast foods;

7 (3) a violation of Section 30-29-2 NMSA 1978,
8 regarding the illegal use of a glue, aerosol spray product or
9 other chemical substance;

10 (4) a violation of the Controlled Substances
11 Act;

12 (5) escape from the custody of a law
13 enforcement officer or a juvenile probation or parole officer
14 or from any placement made by the department by a child who has
15 been adjudicated a delinquent child;

16 (6) a violation of Section 30-15-1.1 NMSA 1978
17 regarding unauthorized graffiti on personal or real property;
18 or

19 (7) a violation of an order of protection
20 issued pursuant to the provisions of the Family Violence
21 Protection Act;

22 B. "delinquent child" means a child who has
23 committed a delinquent act;

24 C. "delinquent offender" means a delinquent child
25 who is subject to juvenile sanctions only and who is not a

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1 youthful offender or a serious youthful offender;

2 D. "detention facility" means a place where a child
3 may be detained under the Children's Code pending court hearing
4 and does not include a facility for the care and rehabilitation
5 of an adjudicated delinquent child;

6 E. "felony" means an act that would be a felony if
7 committed by an adult;

8 F. "misdemeanor" means an act that would be a
9 misdemeanor or petty misdemeanor if committed by an adult;

10 G. "restitution" means financial reimbursement by
11 the child to the victim or community service imposed by the
12 court and is limited to easily ascertainable damages for injury
13 to or loss of property, actual expenses incurred for medical,
14 psychiatric and psychological treatment for injury to a person
15 and lost wages resulting from physical injury, which are a
16 direct and proximate result of a delinquent act. "Restitution"
17 does not include reimbursement for damages for mental anguish,
18 pain and suffering or other intangible losses. As used in this
19 subsection, "victim" means a person who is injured or suffers
20 damage of any kind by an act that is the subject of a complaint
21 or referral to law enforcement officers or juvenile probation
22 authorities. Nothing contained in this definition limits or
23 replaces the provisions of Subsections A and B of Section
24 32A-2-27 NMSA 1978;

25 H. "serious youthful offender" means an individual

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1 fifteen to eighteen years of age who is charged with and
2 indicted or bound over for trial for first degree murder. A
3 "serious youthful offender" is not a delinquent child as
4 defined pursuant to the provisions of this section; and

5 I. "youthful offender" means a delinquent child
6 subject to adult or juvenile sanctions who is:

7 (1) fourteen to eighteen years of age at the
8 time of the offense and who is adjudicated for at least one of
9 the following offenses:

10 (a) second degree murder, as provided in
11 Section 30-2-1 NMSA 1978;

12 (b) assault with intent to commit a
13 violent felony, as provided in Section 30-3-3 NMSA 1978;

14 (c) kidnapping, as provided in
15 Section 30-4-1 NMSA 1978;

16 (d) aggravated battery, as provided in
17 Subsection C of Section 30-3-5 NMSA 1978;

18 (e) aggravated battery against a
19 household member, as provided in Subsection C of Section
20 30-3-16 NMSA 1978;

21 (f) aggravated battery upon a peace
22 officer, as provided in Subsection C of Section 30-22-25 NMSA
23 1978;

24 (g) shooting at a dwelling or occupied
25 building or shooting at or from a motor vehicle, as provided in

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1 Section 30-3-8 NMSA 1978;

2 (h) dangerous use of explosives, as
3 provided in Section 30-7-5 NMSA 1978;

4 (i) criminal sexual penetration, as
5 provided in Section 30-9-11 NMSA 1978;

6 (j) robbery, as provided in Section
7 30-16-2 NMSA 1978;

8 (k) aggravated burglary, as provided in
9 Section 30-16-4 NMSA 1978;

10 (l) aggravated arson, as provided in
11 Section 30-17-6 NMSA 1978; or

12 (m) abuse of a child that results in
13 great bodily harm or death to the child, as provided in Section
14 30-6-1 NMSA 1978;

15 (2) fourteen to eighteen years of age at the
16 time of the offense, ~~and~~ who is adjudicated for any felony
17 offense and who has had three prior, separate felony
18 adjudications within a three-year time period immediately
19 preceding the instant offense. The felony adjudications relied
20 upon as prior adjudications shall not have arisen out of the
21 same transaction or occurrence or series of events related in
22 time and location. Successful completion of consent decrees
23 are not considered a prior adjudication for the purposes of
24 this paragraph; or

25 (3) fourteen years of age and who is

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1 adjudicated for first degree murder, as provided in Section
2 30-2-1 NMSA 1978."

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